

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2272 OF 2005

Dilip Vishnu Kolhatkar
Vs.
Rajani Kusumakar Khare

...Appellant

...Respondent

Mr A.P. Paralikar for the Appellant.
None for the Respondent.

CORAM : A. S. OKA, J.
DATE : APRIL 18, 2006.

P.C.:

1. Heard the Advocate appearing for the Appellant. I have also perused pleadings and notes of evidence. The challenge in this Appeal preferred under section 390 of the Indian Succession Act, 1925 is to heirship certificate granted under provisions of Bombay Regulation VIII of 1827. Heirship Certificate has been granted in favour of the Respondent by the impugned order. According to the case of the Respondent, she is widowed sister-in-law of the deceased Kamalakar Khare in respect of whose estate said heirship certificate is claimed.

2. The case of the present Appellant is that he was occupying a residential premises held by the deceased. The Applicant claimed that he was the caretaker of the deceased. According to the case of

the Appellant, the deceased had expressed a desire to make a Will. The deceased had consulted one Advocate and infact the deceased had executed his final Will. According to the Appellant, in the Will, the deceased had expressed desire to sell his flat to one Boralkar and out of sale consideration, he had made a bequest of Rs.15,00,000/- in favour of the Appellant.

3. I have heard the submissions of the learned Advocate appearing for the Appellant. Admittedly, the Appellant is not claiming to be a legal representative or heir of the deceased under the provisions of the Hindu Succession Act, 1956. The Appellant placed reliance on the Will allegedly executed by the deceased. Admittedly, the original Will or a true copy thereof could not be produced on record and the Appellant relied upon the alleged draft of the Will. He examined the Advocate who was allegedly consulted by the deceased for drafting the Will. The Appellant has not examined any attesting witness to the alleged Will. Thus, it is obvious that the Appellant failed to establish the execution of Will on the part of the deceased. Apart from the Will set up by the Appellant, he has not claimed any independent right,

title and interest in respect of the estate left by the deceased.

4. According to the case of the Respondent, she is the widow of one Kusumakar Khare who died on 26th December, 1991. According to the Respondent the said Kusumakar was the real brother of the deceased. According to the case of the Respondent, the wife of the deceased had already passed away and the deceased has no issues. The Trial Court on the basis of admissions given by the Appellant and his witness Anand Kale held that the Respondent was the sister-in-law of the deceased. The Trial Court accepted the case made out by the Respondent and has issued heirship certificate in favour of the Respondent. In view of the provisions of the Bombay Regulation, the adjudication which is made by the Trial Court is of a summary nature. Surely, the Appellant cannot claim any right, title and interest of whatsoever nature in the property of the deceased. Therefore, there is no merit in the First Appeal and the Appeal is accordingly dismissed with no orders as to costs.

JUDGE